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CURRENT TOPICS

Loss of Expectation of Life

THE decision of the House of Lords in *Benham* v. *Gambling* [1941] A.C. 157 put an end to awards of substantial damages for loss of expectation of life. Since then it has been gradually accepted that such damages should not exceed £500 irrespective of the age of the injured person or the span by which his life has been shortened. Last week the Court of Appeal considered a case (*Davies* v. *Smith, The Times*, 31st January) in which CASSELS, J., had awarded a plaintiff, aged fifty-six, £15,000 general damages. In the course of counsel's argument the LORD CHIEF JUSTICE asked whether *Benham* v. *Gambling* applied when the injured person was alive at the date of the trial, and suggested that if the injured person knows that his life has been foreshortened by the accident, that is a head of damage, properly referable to "loss of expectation of life," for which he should receive substantial compensation. In the event the court in dismissing the appeal dealt with the matter on the basis that the injured person's claim for pain and suffering would be swelled by the mental agony which he must be suffering in the knowledge that the days of life left to him were fewer and that they would be spent in pain, suffering and misery. We believe that this approach is right. It would become very difficult to apply the law if the rule in *Benham* v. *Gambling* were modified according to whether the injured person had died two days or two years after the accident or even after the trial but before the time for appeal had passed. Logically, the House of Lords might have said that loss of expectation of life in itself should not be the subject of damages but that the contemplation of a shortened life should be a factor in assessing damages for pain and suffering. There is one more factor. Where an injured person has dependants the shortening of his life ought to be taken into account in assessing damages.

O. and M. in the Commons

As a profession we are peculiarly concerned with Parliament as the legislative machine which produces a large part of the material which we use in our work. Taking the very short view, we may not be immediately concerned with the methods by which Parliament, and the House of Commons in particular, achieves its results. That ambiguities and absurdities are surprisingly rare is due to the detailed knowledge of their subject on the part of civil servants allied with the exceptional skill of the Parliamentary draftsmen, but omniscience is often bought at the price of simplicity. Some months ago LORD EVERSHED suggested that it was time judges ceased to be grammarians and that Parliament should confine itself to legislating in principle, leaving the courts by a kind of

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statutory equity to apply the principle to detailed situations. There are two chief obstacles to such a system. First, it would be expensive, and, secondly, it is unlikely that Members of Parliament will surrender their right to legislate for foreseen contingencies. It is therefore right that the House of Commons itself should search for ways to make its work more efficient, though we do not envy the members of the Select Committee their task.

Productivity

THE essence of efficiency is to produce the maximum result for the minimum effort and there is no doubt that the biggest single cause for concern is the appalling waste of time involved in the present procedure of the House of Commons. In our opinion, the House is at its best only in full-dress debates on subjects of supreme national importance—occasions which happily are comparatively rare—and at question time. As a purely legislative body, the whole House is ineffective, although standing committees are among the most efficient legislative machines ever devised. In this, we believe, lies the key to the problem. Sittings of the whole House, apart from question time, ought to be concentrated on one or two fixed days and thus we should be spared the spectacle of up to or even over 600 healthy men and women waiting all afternoon and evening to be shepherded at intervals through the division lobbies. Parliament depends for its vitality on both professional and amateur, and ultimately the quality of the product will be affected by the content of the House of Commons. If we permit conditions to develop in which only the professional politicians can survive we shall soon begin paying the penalty. The civil servants and the draftsmen can look after most of the professional aspects of legislation. We therefore hope that the Select Committee will be radical and speedy, although without proposing to abolish picturesque traditions which harm nobody and consume only a negligible amount of time.

The Power of Search

LIKE wire tapping, the practice of stopping and searching citizens in public places is claimed by the police authorities as a necessary means of strengthening the enforcement of the law. Unlike wire tapping, it is a practice which has statutory sanction in many parts of the country. In London a constable may "stop, search and detain" any person "who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained" (Metropolitan Police Act, 1839, s. 66, and see *Scott* v. *Tilley* (1937), 81 SOL. J. 864). The Wallasey Corporation Bill, which is to be read a second time in the House of Commons during the present session, contains such a power. As it is one which Wallasey police have not yet had, it is understandable that controversy has already begun. The authorities in Wallasey claim that their need is great because of the open dock system, without boundary walls or gates, making supervision difficult. Such powers are usually justified nowadays by reference to the peculiar nature of the locality in which they exist, but when they were first formulated, over a hundred years ago, much greater lawlessness prevailed in the towns. It will be remembered that the late Lord Justice Scott thought, in *Ledwith* v. *Roberts* [1937] 1 K.B. 232, that owing to changes in social conditions since the passing of the Vagrancy Act, 1824, the police powers with regard to suspected persons loitering with intent to commit a felony were out of date. When powers affecting personal liberty vary from town to town, sometimes for no clear reason, the most careful deliberation is essential before they are extended piecemeal. The greater number of police forces in the country do without this power of search, being content with their power under the Larceny Act, 1916.

A Career in the Law

WE are frequently asked for our candid opinion about the prospects for young men and women in our profession. Whether or not we fear that such a question will be followed by a devastating supplementary suggesting that we might like a new articled clerk (with salary and without premium), we must admit that most of us give a non-committal reply. The Ministry of Labour and National Service suffer from no similar hesitation: snugly sandwiched in the Ministry's "Choice of Careers" series of booklets between "Laundry and Dry Cleaning" and "Librarianship," we find "Law: Barristers and Solicitors." This is a revised edition of the booklet which has been on sale for some years past and we cordially recommend it to those who prefer not to commit themselves but who want to be helpful. A couple of copies in reserve are always useful and can be obtained through H.M. Stationery Office for 1s. 2d. each including postage, and if no young inquirers come into the office they will be found very useful for keeping the elderly up to date.

Divorce: Care of Children

THE plight of the children of broken marriages was recognised in the recent report of the Royal Commission on Marriage and Divorce to be the most tragic feature of the modern growth in the divorce rate. A Bill which is known to have the support of members of all parties, as well as some Government favour, the Matrimonial Proceedings (Children) Bill, which attempts to carry some of the Commission's proposals into effect, was due for second reading in the Commons on 7th February. It proposes that courts should not make decrees for divorce or nullity of marriage absolute, or pronounce decrees of judicial separation, unless satisfied that the best possible arrangements have been made for the care and upbringing of children under sixteen, or that it is impracticable for the party or parties appearing before the court to make any such arrangements. Where it is desirable to avoid delay in making the divorce absolute or making a decree of judicial separation, either party may give an undertaking to bring the question of the arrangements for the care of the children before the court within a specified time. The Bill would give powers to the court to make orders with regard to the custody, maintenance and education of children, even where proceedings are dismissed.

Changes in Court Fees

As we go to press, we learn that a number of changes in court fees will take effect on 1st March. The Supreme Court (Non-Contentious Probate) Fees Order, 1950, will be completely replaced on that date by a new Order (S.I. 1958 No. 161 (L. 4)) increasing fees 1 and 13, reducing others and simplifying the fees structure; while an amendment to the Supreme Court Fees Order (S.I. 1958 No. 160 (L. 3)) will increase the fees on issuing a writ of summons, an originating application to which no appearance is required and a matrimonial or legitimacy application, while it also abolishes the fees on entering judgment in default of appearance or defence or under Ord. 14 and on filing a notice of application to make a matrimonial decree absolute.

" WITHOUT FATHER BRED "

NOT since the publication of the Wolfenden Report has there been so much ruffling of plumage in elevated dove-cotes as has been caused by Lord Wheatley's decision in the Court of Session at Edinburgh that artificial insemination of a woman with seed other than her husband's, and without his consent, does not amount to adultery (*The Times*, 11th January, 1958). It is difficult to understand why a generation brought up on Wells and Huxley, and who probably read " Brave New World " surreptitiously at school, should be put into such a flurry by the idea of " test-tube babies," as they are popularly called ; perhaps they are haunted by the fear, so beautifully delineated in Giles's cartoon in the *Daily Express*, of dozens of repellent children escaping from test-tubes on a laboratory bench. But, of course, the increasing practice of artificial insemination does present tremendous problems, and these must be understood and solved as soon as possible in order that tragic consequences may be avoided.

Extent of the practice

It is difficult to discover how widespread is the use of artificial insemination, but it has certainly increased enormously in the last twenty years. It is not by any means new : in the fourteenth century the Arabs are said to have used it to sabotage their enemies' breeding of horses by fertilising their blood mares with semen from a stallion of inferior physique. The first recorded human artificial insemination was carried out at the end of the eighteenth century by John Hunter on the wife of a linen draper in the Strand ; he injected semen from the husband, who had a deformity of the genital organs which prevented copulation, and a normal pregnancy resulted. In America the first successful case was in 1866.

Since the Russian physiologist Ivanoff published his monograph on artificial insemination in 1907, this method has been used increasingly all over the world to improve animal husbandry by providing cheaply access to the finest strains, which would otherwise only be available to the larger breeders. The work with animals undoubtedly gave an impetus to human artificial insemination, and by the 1930's there were many enthusiastic practitioners in the United States ; as early as 1941 it was reported that there were 9,580 recorded cases in the United States of women who had become pregnant by this means. From the number of articles published in English, French, Italian and German on this subject every year, it is certain that the practice is spreading, and the problems it poses can no longer be ignored.

Some of the objections

Because the technique is so simple, there is nothing to prevent an even more rapid increase, except the uncertainty which surrounds the legal, social and ethical implications of A.I. Artificial insemination by the husband's semen—" A.I.H.," which is used where the husband produces fertile semen but is impotent—presents little difficulty, since the co-operation of the husband is essential and the child is the true offspring of both husband and wife. But where the husband is infertile the only remedy is " A.I.D."—with the semen of a donor other than the husband—and it is this which raises the serious problems. It provides undeniable opportunities for abuse, and in the present state of the law it gives both father and child a somewhat ambiguous status. But even if these disadvantages could be removed by legislation, it would remain a fruitful source of controversy since it splits apart the two objects of marriage, the procreation of children and the mutual comfort of the parties, which many people regard as equally essential.

The law of this country recognises that these objects are separate and not mutually exclusive : in *Baxter* v. *Baxter* [1947] 2 All E.R. 886, the House of Lords held that procreation of children was not the only, nor indeed an essential, end of marriage, and that the use of contraceptives did not, therefore, prevent consummation. Indeed, the Church of England, by permitting the use of contraceptives, by implication recognises that sexual union can be an end in itself. Science having found a way of removing the barriers to procreation which fate has imposed on certain couples, can the law or the Church with reason deny the joys of reproduction to those who cannot achieve sexual union ? One might have thought that the puritans among us would be delighted at the assumption of the pains and burdens of parenthood without the pleasures which are a usual condition precedent, but there is no sign of such a reaction. It is easy to understand the logic of the attitude of the Roman Catholic Church—both A.I.H. and A.I.D. are condemned because they necessarily involve the sin of masturbation, quite apart from any question of adultery—but it is more difficult to follow the reasoning of others who condemn the practice unreservedly.

Undoubtedly some of the less reasoned opposition comes from the upholders of the withering patriarchal system ; it is easy to see that a matriarchy might welcome a method of procreation which puts the male into the position of a breeding stallion, whose most valued product can be kept on ice and used at will, and perhaps this accounts for the popularity of the practice in the United States. But there are serious disadvantages, however one may look at the problem. There is always the possibility of incestuous unions between the progeny of an unknown donor. This risk can be reduced by using any one donor very sparingly ; it could be eliminated entirely by keeping a register of all A.I.D. births, but the objection to this is that it would defeat the secrecy which it is generally agreed should surround these cases. There is also the possibility of tension between husband and wife or parent and child : most writers, however, report that the experiment has been free from any such trouble, and that in many cases couples return for later pregnancies by A.I.D. The greatest danger is that of deception. An unscrupulous doctor could easily mix fertile semen with that of the infertile husband, thus deluding him into believing that the child was his own offspring ; or a doctor might conspire with a wife to foist on an unwitting husband a child born of another man's seed. Finally, A.I.D. can be used as " cover " for an adulterous union which results in the birth of a child which the husband knows cannot be his ; as Dame Letitia Fairfield has said, a man should have some means of protecting himself if his wife's children appear all over the world without his assistance.

What are the advantages of A.I.D. over the simpler remedy of adoption ? The overwhelming one is, of course, the great benefit conferred on the mother : the experience of pregnancy, birth and lactation is of profound physical, emotional and psychological importance to a woman and can in no way be replaced by adoption. It is the great argument in favour of A.I.D. that it can make it unnecessary for any woman to be denied this vital experience.

Adultery or not ?

One of the most important legal problems raised by A.I.D. is whether or not it is adultery, and this question has not yet been decided in this country. In the United States the law is no more certain ; in one case an Illinois Circuit Court held that it was not adultery (1945—unreported), but in another Illinois case, *Doornbos* v. *Doornbos*, Superior Court No. 54 S14981, A.I.D. was held to constitute adultery and the child was declared illegitimate. In Oklahoma A.I.D. has been held *not* to be adultery. In Canada in 1921 the Supreme Court ruled in *Orford* v. *Orford*, Dominion Law Reports 58, 251, that A.I.D. was adultery, although this ruling was not essential for the decision of the case as the wife was held to have had adulterous intercourse in the normal way. The arguments and the reasoning of Justice Orde, the trial judge, are of great interest. Counsel for the wife argued that there could be no adultery without ordinary sexual intercourse ; in fact he might have used the words of Lord Wheatley in the Edinburgh case : " The extraction of the nexus of human relationship from the act of procreation removes artificial insemination from the classification of sexual intercourse." But Justice Orde rejected this argument, saying that adultery on the part of a wife had from Mosaic times " rested upon deeper, more vital ground than that she had merely committed an act of moral turpitude. . . . Sexual intercourse is adulterous because in the case of a woman it involves the possibility of introducing into the family of the husband a false strain of blood." This argument will not appear very realistic to most people to-day ; while it is true that, in the case of a Duchess or an Arab blood mare, the main danger may be pollution of blood, to the average man the danger of adultery is the same as it is to a woman, namely, the destruction of the greatest single bond which holds the marriage together, the physical union of husband and wife to the exclusion of all others.

Some English decisions and *dicta*, notably those in *Russell* v. *Russell & Mayer* [1924] A.C. 687, indicate that our courts have in the past been more interested in the source of the seed than in the method of fecundation ; Lord Dunedin, for example, expressed the view that " fecundation *ab extra* is adultery." It is impossible to speculate on whether the courts of this country would to-day follow Lord Dunedin or Lord Wheatley. It is difficult, however, to see any logic in holding A.I.D. to be adultery : the clinical *mise-en-scène*, with the white-robed doctor and attendant nurse, seem no more a violation of the marriage bed than is the routine gynæcological examination. And if it were held to be adultery, what of the position of the donor ? He would be liable as co-respondent to pay costs and damages, and as petitioner he would need to ask for the court's discretion.

Dr. Fisher, however, would not stop at making A.I.D. adultery : he would have it a crime. There may be arguments for creating a new matrimonial offence in A.I.D. without consent, as recommended by the Royal Commission on Divorce, but there can be no possible justification for making it a crime while fornication, adultery and the bearing and fathering of bastards remain innocent pursuits in the eyes of the law. In those States where adultery is a crime or an action for damages lies for criminal conversation (New York and Iowa are examples) there do not appear to have been any findings that A.I.D. was either crime or tort. It is curious that the Archbishop, whose views on the Wolfenden Report recommendations on homosexuality were so liberal, should have allowed his strong feelings about artificial insemination to drive him into such an indefensible position.

Even if A.I.D. without consent is not made a specific matrimonial offence, it is evidently a breach of marital obligations of such gravity as to strike at the roots of the marriage and some remedy should be available to the injured husband. It might well be that such conduct could amount to legal cruelty : refusal to have a child (*Forbes* v. *Forbes* (*No. 2*) [1955] 2 All E.R. 311) and voluntary self-sterilisation (*Bravery* v. *Bravery* [1954] 3 All E.R. 59) have been held to be cruelty, and having a child outside the marriage without consent would seem to be a natural corollary of these offences. Its effect on nullity suits is already settled : if a wife has a child by A.I.D., with or without her husband's consent, knowing her legal rights in respect of non-consummation, she will be held to have approbated the marriage and her nullity petition will fail for want of sincerity (compare *W.* v. *W.* [1952] 1 All E.R. 858 and *L.* v. *L.* [1949] 1 All E.R. 141).

Property rights

Inheritance presents another problem in the case of these children. Unless the presumption is rebutted, they will be regarded by the law as the children of the marriage, and will inherit accordingly. But the presumption can be rebutted at any time by proving either non-access by the husband or his impotence due to some gross deficiency, and the only way in which the child's rights can be safeguarded is by immediate adoption by both parents. Even this will not ensure the descent of certain forms of property or title—those which pass only from the " father " to the " heirs of his body." It is difficult to see how the interests of other persons who would inherit in default of issue to the parents can be protected if the husband and wife are determined to conspire to deceive the doctor and the world as to the true origin of the child : practitioners are advised by the Medical Defence Union to obtain an assurance in writing that there are no such other interests, but no doctor can be expected to investigate the genealogy of his patients ; the only advantage of such an assurance seems to be the protection of the doctor against a charge of conspiring to disinherit some other person.

Suggestions for legislation

Legislation which would clear up some of the anomalies in A.I.D. cases might be directed towards protecting the unconsenting husband by making it a matrimonial offence in those circumstances ; ensuring the status of the child by making adoption compulsory and as of right of birth, with the right to enter the husband's name as father in the entry of birth (at present this is perjury) ; and the keeping of a compulsory register of all A.I.D. births, with the donor indicated by a number. The latter course would do away with the secrecy of the process, but the advantages of secrecy must be weighed against its dangers : incestuous marriages could be avoided and deception of the child and the public—in some ways the most unpleasant aspect of A.I.D. and the one which angers Dr. Fisher as much as anything—would be made impossible. There need be no stigma attached to such a birth, and, when it becomes commoner and more frankly accepted, any such stigma will disappear as it has very largely done in the case of divorce. It is interesting that in at least five States in the U.S.A. Bills have been introduced to legitimise a child born by A.I.D. with the consent of the husband, but none of these Bills has yet become law as far as can be discovered. Here we must await the results of Parliamentary pressure for legislation, which it is to be hoped will be unhurried and will provide a permanent solution to these problems.

MARGARET PUXON.

NOTES ON AN OCCUPIER'S LIABILITY—III

Some licensee cases

As we have seen, licensees and invitees are now grouped together under the Occupier's Liability Act, and the same common duty of care is owed to them. Consequently the cases which are likely to be decided differently under the Act are cases where a licensee failed not because he or she failed to take sufficient care for himself or herself (as in *Fairman's* case, which in consequence would not be decided differently), but because it was held that the duty owed to the licensee was not high enough to enable the plaintiff to succeed. Now that the duty has been raised to the same level, these cases should be differently decided. At the same time, we must point out that the state of the law as it had developed just before the passing of the Act was such that the differences, if they existed at all, were slight. It is the older cases that would be upset.

This appears from, for example, the cases of *Pearson* v. *Lambeth Borough Council* [1950] 2 K.B. 353 and *Hawkins* v. *Coulsdon and Purley U.D.C.* [1954] 1 Q.B. 319. In the latter case, Denning, L.J., looking at earlier authorities (particularly *Southcote* v. *Stanley* (1856), 1 H. & N. 247, and *Gautret* v. *Egerton* (1867), L.R. 2 C.P. 371), indicated that in his view they would not be decided on the same principles to-day. In *Pearson's* case the plaintiff struck his head against an iron grille when leaving a public convenience. This grille was a sliding affair, which could be closed and locked by a hasp. When open, however, it could not be locked open. In other similar places owned by the authority there was provision for locking open. There was evidence that the authority knew, through their servants, that children constantly moved the grille in question, among other purposes, for swinging on it, and they had done so on the morning that the plaintiff was injured. It was found that whilst the plaintiff was in the convenience the grille had been pulled forward by children. In this case the court desired to hold that the plaintiff was an invitee and only refrained from doing so because of authority to the contrary which they felt constrained to follow (particularly *Baker* v. *Bethnal Green Borough Council* (1945), 43 L.G.R. 75). But they also found that the council "knew" of the danger because the attendants, their servants, knew of it and hence, even though the plaintiff was only a licensee, there was a duty to warn of this "concealed danger" or "trap."

Hawkins' case was somewhat similar, the main difference being that whilst it was found that the council knew the facts which constituted the danger they did not appreciate that those facts did constitute any danger. The trial judge considered that a reasonable man having such knowledge would have appreciated the danger, and hence, in effect, he found that they did "know" of the danger (by implication he found that they were an unreasonable council!). In this case, Denning, L.J., made a number of points which may be of value still. One which may perhaps be mentioned here, though it is now only of historical interest, is that the bringing together of the rights of invitees and licensees was partly done by the provisions of the Law Reform (Personal Injuries) Act, 1948, which abolished common employment, for one of the grounds of defeating a claim by a licensee was common employment with the servant of the defendant.

Gautret v. *Egerton, supra,* helps to show what to our modern view seems a curious basis for the decision in some of the earlier cases on licensees. It was a case where the plaintiff was crossing a bridge in some dock premises, when he fell into a cutting and was drowned. The complaint against the occupiers was for a negligent act of omission, but the claim was dismissed. Willes, J., said: "A permission to use a way must be taken to be in the nature of a gift." The principle of the law of gifts is that the giver is not responsible for damage resulting from the insecurity of the thing, unless he knew of its evil character at the time, and omitted to caution the donee. At the same time, the learned judge made it clear that the giver would be liable for acts of commission which were negligent. This "gift" basis and the distinction between acts of commission and omission no longer hold good, it is submitted.

One modern case that would be decided differently to-day is *Jacobs* v. *L.C.C.* [1950] A.C. 361, because this case turned solely on the point whether the plaintiff was a licensee or invitee, it being conceded that if she was an invitee she would recover and if a licensee she could not. She was visiting a shop owned by the L.C.C. and let to a firm of chemists. The shop had a forecourt paved in a manner similar to that of the footpath. The forecourt was not fenced, but the paving stones were laid in a way that left a line indicating the division. This forecourt was in the occupation of the L.C.C. and there was a stopcock which protruded because the stones around it had sunk. The plaintiff fell over it and suffered a fracture of the knee cap. Her action failed because she was a licensee, but it seems clear that there was what would be a breach of the common duty of care under the Act.

Landlord and tenant

In *Cavalier* v. *Pope* [1906] A.C. 428, a landlord contracted with his tenant to repair certain flooring in the demised premises, but failed to do so. The consequence was that the tenant's wife was injured through the continuance of the defect. It was held that the wife had no claim; she could not claim under the contract because she was not a party to it, and her claim in tort was also rejected; there being no legal duty in regard to ruinous houses. The law in such a case has been altered by s. 4 of the new Act, which provides that, where premises are occupied by any person under a tenancy which puts on the landlord an obligation to that person for the maintenance or repair of the premises, the landlord shall owe to *all persons* who or whose goods may from time to time be lawfully on the premises the same duty in respect of dangers arising from any default by him in carrying out that obligation as if he were the occupier and those persons (or their goods) were there by invitation or permission but without any contract. Thus he is saddled with the common duty of care to any such person.

L. W. M.

Mr. RICHARD CLIFFORD BATESON, solicitor, of Barnoldswick, has been appointed clerk to Satterforth Parish Council.

Mr. HAROLD JOHN BROWN, M.C., Q.C., has been appointed Recorder of the Borough of King's Lynn.

Mr. REGINALD ARTHUR ROBERT GRAY has been appointed town clerk of Lewes, Sussex, in succession to Mr. N. J. HEANEY, who has been appointed clerk to Battle Rural Council with effect from 1st April.

"The Solicitors' Journal"
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"FOR THE PURPOSES OF A PRIVATE DWELLING-HOUSE ONLY"

COVENANTS restricting the use of premises, either existing houses or buildings still to be erected, to the purposes of a private dwelling-house only—or terms to the like effect—are met in practice quite frequently, but it is not always easy to interpret the particular covenant and to apply it to the circumstances in question. An examination of the decided cases and the various types of problems that may arise may, therefore, be of value. In considering the cases, however, two points must be borne in mind :—

(*a*) the decision in a particular case may—and often does—turn on the exact wording of the covenant in question ; and

(*b*) different considerations may at times apply to restrictive covenants enforceable in equity under the *Tulk* v. *Moxhay* rule from those applicable to covenants contained in leases and enforceable against lessees.

First it may be as well to state the type of problems that may arise—

(i) Is a covenant to build only a dwelling-house on a particular parcel of land broken by the construction of a block of flats and/or maisonettes ?

(ii) Is a covenant to use the premises for the purposes of a private dwelling-house only broken by taking paying guests or lodgers, by sub-letting part of the premises, by breaking the premises up physically into a number of flats, etc., or by carrying on a minor business through the post and telephone only ?

An attempt will now be made to answer these self-imposed questions from decided cases.

Erection of flats

In the well-known case of *Rogers* v. *Hosegood* [1900] 2 Ch. 388, a large block of buildings intended to be used as residential flats was erected on a parcel of land subject to a restrictive covenant to the effect that any messuage erected on the plot should be adapted for and used as and for a private residence only ; this was held to amount to a breach of the covenant. In Australia, a covenant not to erect "any building save one dwelling-house," was broken by the erection of a villa containing two flats (*Re Marshall & Scott's Contract* [1938] V.L.R. 98) and, in Canada, the erection of a "duplex" house was held to be a breach of a covenant requiring any premises erected to be used "for the purpose of a private dwelling-house and residence only" (*Re James & Cutts* [1923] 4 D.L.R. 950). A block of flats cannot, therefore, be said to be "a" dwelling-house ; although each separate flat may itself be a dwelling-house, as may rooms in a college of a university or at the Inns of Court (*Thompson* v. *Ward* (1871), L.R. 6 C.P. 327) ; and in *Lewin* v. *End* [1906] A.C. 299, Lord Atkinson said (at p. 304), "by a dwelling-house I understand a house in which people live or which is physically capable of being used for human habitation."

The erection of a wall was held to amount to a breach of a covenant requiring no buildings to be erected except dwelling-houses (*Bowes* v. *Law* (1870), L.R. 9 Eq. 636), and in *Re Spencer Flats, Ltd.* [1937] Ch. 86 it was assumed by both parties to the litigation, and by the court, that the demolition of a house and the re-erection on the site of a block of residential flats was a breach of a covenant against using the premises otherwise than as a private residence. A terrace of houses may be a single building (*Birch* v. *Wigan Corporation* [1952] 2 All E.R. 893), as may a pair of semi-detached houses (*Hedley* v. *Webb* [1901] 2 Ch. 126), but a block of flats or maisonettes cannot be a single dwelling-house. If the covenant provides, however, that "dwelling-houses" (and not just a "single" dwelling-house) may be erected on the particular parcel of land, it is perhaps not logical to argue that these same houses must be divided laterally and not horizontally(1) (there will, of course, be no difficulty if the covenant provides that the several dwelling-houses are to be "detached"—but "separate" does not mean the same thing). A restrictive covenant must be construed strictly (see, e.g., *Brigg* v. *Thornton* [1904] 1 Ch. 386) but in accordance with the intentions of the parties, and in common parlance, it is submitted that the word "house" or "dwelling-house" would not include a flat—and indeed the Legislature seems to have recognised this view for, where it intends the term "house" to include a flat, it has expressly so provided (Housing (Financial and Miscellaneous Provisions) Act, 1946, s. 25 (2), and Housing Act, 1949, s. 50 (1)). On balance, therefore, it is submitted that the erection of a block of flats would amount to a breach of a covenant prohibiting the erection on the land of buildings other than dwelling-houses.

Use of the premises

In the cases hereafter discussed, the exact effect of a covenant requiring particular premises to be used for the purposes of a private dwelling-house only is often clouded by the existence of further covenants, such as covenants prohibiting the carrying on of a trade or business on the premises, or prohibiting sub-letting, but the courts have usually been careful to indicate the particular covenant or covenants which they consider to have been broken in the circumstances.

The various cases may be considered as follows ; in each case there was a covenant prohibiting the use of the premises otherwise than for the purposes of a private dwelling-house or residence :—

(*a*) The covenant was clearly broken by the conversion of the house into three flats and a maisonette (*Day* v. *Waldron* (1919), 88 L.J.K.B. 937).

(*b*) The same decision was arrived at in a case of the sub-letting of three rooms on the first floor of the premises (*Barton* v. *Keeble* [1928] Ch. 517, although here there was also a breach of a covenant prohibiting the carrying on of a business). The sub-letting of the top floor of the premises as a separate flat was held to amount to a breach in *Dobbs* v. *Linford* [1952] 2 All E.R. 827, although it seems that if the fact of sub-letting had not been in the contemplation of the lessor (as was indicated by the existence of a covenant prohibiting sub-letting without the consent of the landlord, such consent not to be unreasonably withheld), the sharing of a part of the house with another family(2) might not have been held to amount to a breach of a "dwelling-house only" covenant ; see the remarks, admittedly *obiter*, of the members of the Court of Appeal in *Downie* v. *Turner* [1951] 1 All E.R. 416, considered in the light of the later decision of *Dobbs* v. *Linford* (above).

(1) In *Rogers* v. *Hosegood*, *supra*, Farwell, J., had said it was impossible to distinguish between a terrace of houses and a "pile of residences."
(2) The *Cole* v. *Harris* [1945] K.B. 474, type of case.

(*c*) The accommodation of "paying guests" was considered in *Tendler* v. *Sproule* [1947] 1 All E.R. 193, when it was held that the accommodation of two such guests only—and in circumstances where there was, unlike *Thorn* v. *Madden* [1925] 1 Ch. 847, no evidence that the tenant had taken any active steps to find his "guests"—amounted to a breach of a covenant "not to use the premises . . . for any trade or business but keep the same as a private dwelling-house only." Lodgers are presumably in the same category as "paying guests," the difference being one mainly of locality, but it would seem that whereas the taking in of a number of lodgers may well amount to a business (*Rolls* v. *Miller* (1884), 27 Ch. D. 71), the taking in of a single lodger ought not to amount to a breach of a "private dwelling-house only" covenant—perhaps the *de minimis* rule could be invoked.

(*d*) The letting of premises in separate tenements to a number of weekly tenants was clearly a breach of a "private dwelling-house only" covenant (*Berton* v. *Alliance Economic Investment Co.* [1922] 1 K.B. 742), and so, it is submitted, would have been the division of premises into three flats and the provision of services for the tenants thereof, which was held to amount to a breach of a "no business" covenant in *Barton* v. *Reed* [1932] 1 Ch. 362.

(*e*) The use of premises as a boarding-house for the pupils at a neighbouring school was held to be a breach of the covenant in *Hobson* v. *Tulloch* [1898] 1 Ch. 424.

(*f*) The same result was arrived at in the case of a building erected in the garden of a dwelling-house and used as an art studio for ladies in *Patman* v. *Harland* (1881), 17 Ch. D. 353, a case more famous for its general principle.

(*g*) In *German* v. *Chapman* (1877), 7 Ch. D. 271, the carrying on of a charitable home for children was held to be a breach of such a covenant.

(*h*) In *Stoke Lands* v. *Sears* (1948), 151 E.G. 196, the tenant of a private dwelling-house conducted a private hire car service by post and telephone from the house, and this was held to amount to a breach of a "private dwelling-house only" covenant, although no callers in fact resorted to the house. Similarly, an advertisement in a window of a house referring to a "coal order office" was held to amount to a breach of such a covenant in *Heard* v. *Stuart* (1907), 24 T.L.R. 104.

Some of these decisions seem to go rather far, but it is clear that the courts will guard jealously (within the usual limits of the enforcement of restrictive covenants, in the case of freeholds; see, e.g., 101 SOL. J. 543) the sanctity of the private dwelling-house. The exhibition of an insurance agent's notice board, or a doctor's or solicitor's plate, would presumably be caught by the covenant—but in the case of the professions, a special exemption in sometimes made in the terms of the covenant in favour of a "professional residence." In the days when there were only three "learned professions," the meaning of such an exemption was clear enough, but now it may give rise to problems of interpretation of its own (see, e.g., *Carr* v. *Inland Revenue Commissioners* [1944] 2 All E.R. 163). The intention of the parties at the time when the covenant was imposed is the deciding factor.

Statutory provisions

Enforcement of covenants for the purposes of a private dwelling-house only, as between lessor and lessee, has taken on a special significance since the passing of the Landlord and Tenant Act, 1954; for a tenant who is able to establish that his landlord has consented (expressly or by implication) to a business use being made of the premises by the tenant, may be able to claim protection for his tenancy under Pt. II of the Act. For the purposes of Pt. II, a covenant requiring premises to be used for the purposes of a private dwelling-house only is probably sufficient to amount to a "prohibition" of business use being made of the premises, and so such a covenant would, if there has been no subsequent consent, shut out the protection of the Act (see s. 23 (4) thereof).

The use of a single dwelling-house as two or more separate dwellings is also subject to statutory control, quite apart from restrictive covenants:—

(*a*) Such a use amounts to development in respect of which express planning permission will normally be necessary (Town and Country Planning Act, 1947, s. 12 (3)); and

(*b*) Plans will have to be submitted under the building byelaws, as they apply to such a "material change of use": see Public Health Act, 1936, s. 62 (2).

In any case where planning permission has been obtained for such a conversion (whether or not any structural alterations are necessary: *Stack* v. *Church Commissioners* [1952] 1 All E.R. 1352), the local county court may vary the terms of any restrictive covenant or provision in a lease (operating on the freehold or leasehold interests) which prohibits the conversion of a house into several tenements, without any further justification being given therefor. The county court have a similar jurisdiction where there have been changes in the character of the neighbourhood (as to which, see *Alliance Economic Investment Co.* v. *Berton* (1923), 92 L.J.K.B. 750), both jurisdictions being given by what is now s. 165 of the Housing Act, 1957, replacing earlier legislation. This power to modify or discharge a covenant or other provision, be it one to use the premises as a single private dwelling-house only, or one prohibiting alterations, etc., exists in addition to the more general jurisdiction (which is, however, confined to freeholds) of the Lands Tribunal and the High Court, under s. 84 of the Law of Property Act, 1925 (see, e.g., 101 SOL. J. 861).

J. F. GARNER

OBITUARY

MR. G. E. DAVIES

Mr. George Edward Davies, solicitor, of Birmingham, died on 24th January. He was admitted in 1924.

MR. W. O. LUSCOMBE

Mr. William Oliver Luscombe, solicitor, of East Grinstead, and East Grinstead magistrates' clerk since 1941, died recently. He was admitted in 1914.

MR. F. J. TOLHURST

Mr. Francis Joseph Tolhurst, solicitor, of Gravesend, Kent, died recently aged 85. He was admitted in 1897.

MR. A. ZYLINSKI

Mr. Andrew Zylinski, solicitor, of Welbeck Street, London, W.1, and Streatham Hill, Brixton, London, S.W.2, died on 24th January. He was admitted in 1952.

Landlord and Tenant Notebook

REPUDIATION OF LANDLORD'S TITLE

REFERENCE was made to the decision in *Warner* v. *Sampson* [1958] 2 W.L.R. 212, and p. 107, *post*, in this "Notebook" on 4th January (*ante*, p. 8) in the course of an article on "Feudal Incidents," my observations being based on a report which had appeared in *The Times* of 6th December last. The full report now available merits further discussion of the case, in which there were two issues: whether a general traverse in a tenant's defence constituted a "disclaimer," and whether such a disclaimer by one joint tenant affected the interest of the other. A third question, whether relief can be granted against forfeiture on the ground of such a disclaimer, has since been decided against the tenant ([1958] 2 W.L.R., at p. 222; *post*, p. 107) but will not be gone into in this article.

The history of the case falls into two parts, that of events before and that of events after the issue of the writ.

Part I: The lessee of a house, the lease containing repairing covenants and provisos for re-entry in support, died on 23rd June, 1949, appointing the defendants her executors and trustees, they to permit the first defendant to use and occupy it, etc., during his life. Rent (a modest ground rent) was paid until Michaelmas, 1953; after several defaults the landlord looked into the question of observance of the repairing covenants, and as a result served notice of breaches—on each defendant—in January, 1955. The first defendant (though it was he who was entitled to use and occupation) did nothing and the second defendant failed to stir him into activity, and on 27th April, 1955, the landlord issued the writ.

Part II: On 4th May, the writ was served on the first defendant and on 27th May judgment was entered against him in default of appearance. On 15th June the defence of the second defendant was delivered, consisting of three paragraphs: she admitted that she was executrix of the deceased lessee's will; she denied the alleged breaches of covenant; and "save and except for the admission herein contained this defendant denies each and every allegation in the statement of claim as if the same were specifically set out and traversed *seriatim*." The plaintiff, in her reply on 29th June, claimed forfeiture on the ground of disputed title; and then, on 26th August, a master set aside the judgment against the first defendant and gave leave to the second defendant to withdraw her defence. The plaintiff having appealed, Pearson, J., varied the latter part of the order, on 6th October, making it an order giving leave to amend the defence. The amended defence, and that of the first defendant, were delivered on 14th February, 1956.

The original plaintiff having died on 8th November, 1956, her administratrices were substituted on 1st March, 1957, and the action at last came on for hearing on 22nd November of that year.

Withdrawal and amendment

After holding that the third paragraph of the original defence amounted to a clear and specific denial of the landlord's title (*Wisbech St. Mary Parish Council* v. *Lilley* [1956] 1 W.L.R. 121; 100 SOL. J. 90 (C.A.)—as to which see 100 SOL. J. 145—being distinguished), Ashworth, J., considered the effect of the order made by Pearson, J. The learned judge held that the order made on appeal showed that Pearson, J., had been unwilling to deprive the plaintiff of "a right which had already crystallised, namely, to treat that defence as a denial of the lease," and for this reason alone declined to give effect to the contention that the evil had been cured. But the learned judge also said that if the master's order had not been varied, "there would be much force in" the argument. This is a little difficult to reconcile with the "already crystallised" view of the situation. A character in one of the many scenes of "Back to Methuselah," on being asked to withdraw a remark, asks the very Shavian question "how can I withdraw what I have said"; to quote an older author, it seems very much a case of "what's done cannot be undone" (Macbeth, Act V, Sc. 1).

Mistake or lapse

A contention was made that the denial was made by mistake—and in so far as this might mean that the pleader had overlooked the possible consequence the plaintiff was magnanimously prepared to accept it. But, as Ashworth, J., said, there was nothing to show that counsel had not intended to draft the pleading in the form in which it was delivered, or that his "mind did not go with his signature." The learned judge considered "mistake" an unsatisfactory word, and preferred "lapse." One of the sub-titles to the report in the All England Reports ([1958] All E.R. 44) runs: "Lapse in pleading due to forgetfulness rather than mistake," which may fairly summarise the position, though it might be said that the lapse was partly due to remembering.

Disclaiming and repudiating

The learned judge twice had occasion to refer to the nature of "disclaimer." Of the actual existence of the rule, little was said: it was necessary only to refer to *Kisch* v. *Hawes Bros., Ltd.* [1935] Ch. 102 and *Barton* v. *Reed* [1932] 1 Ch. 362, mention also being made of an article in 76 SOL. J. 73. Both these cases were discussed in the more recent article (*ante*, p. 8) referred to above. Later, when dealing with the question whether the first defendant was affected by the second defendant's lapse, Ashworth, J., subjected the use of the term "disclaimer" to some criticism, and expressed the view that it was a misnomer: "this so-called disclaimer is in essence a repudiation of the tenancy."

The reasoning, or part of it, was that the root principle was that the law "tacitly annexes a condition that, if the lessee do anything that may affect the interest of his lessor, the lease shall be void, and the lessor may re-enter": *Doe d. Ellerbrock* v. *Flynn* (1834), 1 Cr. M. & R. 137. The question whether the condition is so wide was touched upon in the "Notebook" for 25th February, 1956 (100 SOL. J. 145) in an article discussing *Wisbech St. Mary Parish Council* v. *Lilley*, *supra*, and entitled "Alleged Betrayal of Landlord's Interest"; both that and the more recent article refer to other authorities, suggesting that a mere denial may not "affect the interest" of the lessor. In *Doe d. Graves* v. *Wells* (1839), 10 Ad. & El. 427, Denman, C.J., took the view that the tenant in *Doe d. Ellerbrock* v. *Flynn* had incurred forfeiture because his actions might have placed his landlord in a worse position. And in *Doe d. Williams and Jeffery* v. *Cooper* (1840), 1 Man. & Gr. 135, Tindal, C.J., declared: "A disclaimer, as the word imports, must be a renunciation by the party of his character of tenant, either by setting up title in another, or by claiming it in himself."

The second defendant in *Warner* v. *Sampson* can hardly be said to have placed the landlords in a worse position, nor did she either set up title in another or claim it herself; but forfeiture was held to have been established, as it was in *Kisch* v. *Hawes Bros., Ltd.*

United we . . . fall

There was, of course, an unfortunate lack of co-ordination in the efforts made by the two defendants to stave off the attack. First one would not move; when the second had persuaded him to do so, she stumbled and fell, and the question arose whether she brought the first defendant down with her. And this led to a distinction being drawn between joint tenants who are, and joint tenants who are not, personal representatives of a deceased's estate.

Ample authority was found for the proposition that, if they were joint tenants at all, one could bind the other because they belonged to the particular sub-species: there was a passage in Bacon's Abridgement stating that if one of two executors granted all his interest to a stranger, the whole term passes " for each had an entire authority and interest different from other joint tenants "; a statement to the same effect in Dyer, 23*b*, was applied in *Simpson* v. *Gutteridge* (1816), 1 Madd. 609. Authority for the proposition that one of two " ordinary " joint lessees cannot surrender without the concurrence of the other was readily found in *Leek and Moorlands Building Society* v. *Clark* [1952] 2 Q.B. 788; but the defendants were co-executors.

The defence then fell back on the Administration of Estates Act, 1925, s. 2 (2), by which a conveyance of real estate, where there are two or more personal representatives, may not be made without the concurrence of all (or an order of the court), " conveyance," by s. 55 (1) (iii) including a disclaimer. It was this inclusion which occasioned the observations on nomenclature already referred to; Ashworth, J., pointed out that the subsection contemplated a document (starting with " This Disclaimer ") and a " conveyance " which could be lawfully and properly executed —not one which would infringe the condition tacitly annexed. The fateful defence delivered on 15th June, 1955, was not such a disclaimer.

R. B.

HERE AND THERE

LARGER THAN LIFE

It is not just in the sense of a music-hall joke that opera singers are somewhat larger than life. Physically an alliance between modern æsthetics and modern dietetics has tended to fine them down. The mountainous prima donna is out of date as a figure of fun. Aldermanic proportions are no longer an operatic asset. " Dignity by an operatic artist is essential. The public wishes her to be noble and delicate. It is harmful if the public discovers the vulgar background of a Madame Butterfly who treats herself on spaghetti." This was laid down by the advocate appearing for the distinguished soprano Maria Callas, in an action against a spaghetti manufacturing company which had unauthorisedly used her name in its publicity. No, it is in their personalities that opera singers are rather larger than life, though few carry the idiom of high operatic tragedy into their domestic affairs so enthusiastically as the opera singer who figured in the divorce court a couple of years ago. The evidence described one magnificent scene in which she threw her husband over her head, fell on him, bit his ankle, chased him upstairs, battered the locked door of his room with her son's air rifle and aimed the gun at his face. The curtain fell, as it were, when, in an almost Wagnerian climax, he made a spectacular exit through a window into the garden.

SWORD PLAY

All collectors of operatic incidents will regret the settlement of the threatened legal proceedings between the Italian tenor Franco Corelli, and the Bulgarian-born bass Boris Christoff, who recently crossed swords, quite literally, during a rehearsal of Verdi's *Don Carlos* at the Opera House in Rome. Corelli had the name part, Christoff that of Philip II. A dispute arose as to the relative positions they should occupy. Swords clashed. Christoff retired with a gashed finger. With a fine restraint and understatement Corelli remarked: " Between Christoff and myself there was never excessive sympathy. Although the libretto does not foresee a duel between Philip and Don Carlos, Christoff hit me with his sword and I reacted, trying to disarm him." Christoff, on his side, threatened an action against his opponent for " grave insults and threats " and another against the opera company for breach of contract. But peace is reported restored on the basis that " the incident was due exclusively to different interpretations of the scenario." So all ends in moderation, though there was room for genuine tragedy. One remembers how our own Charles Macklin in the eighteenth century accidentally killed a fellow actor by stabbing him in the eye during a green room dispute over a wig. If I remember aright, the emblems on his monument in St. Paul's, Covent Garden, hint allusively at the episode. James Quin, his contemporary, killed two fellow actors in duels, after stage disputes, getting off with one acquittal and one manslaughter verdict.

POLICE AT THE OPERA

The affray in Rome between the tenor and the bass followed quickly on the sensation of the opening night of the season when Madame Callas retired after the first act of Bellini's *Norma*. So great was the public excitement that the Prefecture of Police warned the management not to allow her to appear again for the time being as the peace might be endangered. Her wealthy husband is reported to have said: " It is fantastic the police stepping into this matter. Such a thing has never happened anywhere in the world. I wonder what America feels about this. My wife has an American passport." On the whole, it seems unlikely that an American warship will sail into the Tiber. The Americans themselves are thoroughly accustomed to the larger-than-life element in operatic occasions. Indeed, a couple of years ago when a little dispute over an alleged breach of contract arose while Madame Callas was singing at Chicago's civic opera house her opponents sent in no less than eight sheriff's officers to serve the writ during a performance of *Madame Butterfly*. The scene off-stage amid a jostling crowd of hand-waving sopranos, tenors and baritones shouting in every known operatic language had a dramatic quality in which the audience in the front of the house would have given much to participate. As for the question of police intervention in opera, that is not as much of a novelty as some might imagine. In his

exquisitely funny book, "Looking for a Bluebird," Joseph Wechsberg recalls a period between the wars when he was a member of the claque at the opera in Vienna. Although the claque received payments from its customers among the stars, it fulfilled a useful function in guiding and regulating the applause and keeping it directed and orderly, and, under an organiser of genius, Herr Schostal, it worked with a genuine professional conscience. Now, strange as it may seem, there were always four police inspectors on duty at every performance to guard against "disturbing manifestations," and once one of them, a tough, punctilious man named Kramer, who hated music, declared war on the claque. One night, when one of their favourite clients, Rosette Anday, was appearing in *Samson and Delilah*, he gave them a specific warning of prosecution if there were any "disturbing manifestations." Schostal took up the challenge and the thunderous applause that greeted the contralto's aria "*Mon cœur s'ouvre à ta voix*," brought Kramer round, notebook in hand. But at the police court next day things did not go quite as he had intended. Madame Anday, who had a devoted admirer very high up in the police force, had already telephoned to complain about Kramer's action. Schostal, pleading guilty, was allowed to make a tremendous speech in defence of the claque as an institution, "an essential part of the opera house, like the stage lights, the orchestra and the cashier. Who is this man Kramer to dispute these axioms?" The magistrate imposed a minimum fine and afterwards privately apologised for the misunderstanding. That night the four inspectors on duty bowed deeply to Schostal when he arrived at the opera. Kramer was not there. "He had been transferred to Brigittenau, a tough, outlying district, considered the Siberia of Vienna's policemen."

RICHARD ROE.

Country Practice

MAKING ENDS MEET

AT the time of year when budget proposals occupy some of the thoughts of some of our legislators, many solicitors are similarly drawn to the question of how to make ends meet. There are, no doubt, some practitioners who have struck it rich; but even they have to do a certain amount of worrying on behalf of their clients. Will it be possible, they wonder, to unload half a million pounds' worth of Stock Exchange securities for old Lady Whatshername and buy up agricultural property before the Treasury bungs up that particular loophole? An interesting point, no doubt, but somewhat removed from the financial problems facing the rank and file of the profession. The seasonal worry of quite a number of solicitors arises from the fact of having to have their accounts audited. For various reasons it is desirable to put off the audit for as long as possible—not with the object of avoiding hard facts, but to enable the year's work to settle down and sort itself out. Any newly qualified man who does not quite see the point should consider the result of accountants arriving the day after the close of the financial year. The thought of attempting to estimate the value of work in hand should make him old before his time. Six months later, when the current work has mostly been completed, and bills safely delivered—and paid, some of them—one can face the accountants quite calmly. The desire to put off the audit for as long as possible, but not so as to cause trouble over the renewal of practising certificates, makes early spring a popular season for the auditors to arrive with the object of satisfying both the Registrar of Solicitors and the local Inspector of Taxes.

It is pending the arrival of the accountants that many solicitors have to face the problem of How to Eke. Apart from "equal monthly drawings," a period of financial abstinence faces them until the accountant can report what (if anything) is due to each partner from last year's profits. Only then can such items as education, washing machines, and this year's holidays be placed upon the domestic agenda. Until then, relations with one's bank manager tend to be a little furtive.

How, then, to eke? For badly balanced solicitors I offer a few suggestions. Those of my readers who follow my advice will not, I regret to say, increase their share in the profits by a cool thousand, or even a cool fiver; but they may be able to stave off, for a few hours, the surreptitious cashing of a cheque.

First of all, commissioners' fees. These can so easily be thrust casually into one's pocket and be lost. A much better way is to lose them on football pools. If a pools addict can steel himself to fill in a coupon only when he has been paid a commissioner's fee, he will be far better off in consequence.

For non-big-city solicitors, travelling allowances must be carefully studied. Thus the typical solicitor's wife may say: "Oh, I see the sales are on at Extown; I wonder if I can slip in next Wednesday just to buy a few . . ." By this time, the eking solicitor should be saying: "Ah, but I have a completion (or county court case) at Wyetown the following Thursday; wouldn't you rather have a trip in with me?" In really desperate cases, of course, the completion can be by post, or the case settled out of court; but this should not occur too often. However, a day at the sales always seems less expensive when the Inspector of Taxes pays the travelling expenses. This, however, should not be explained to the typical solicitor's wife. Bachelor solicitors who do not quite understand this should write to me privately.

In my own case, there is the technique of busting into the nest egg. My nest egg is a row of quite well-grown lime and sycamore trees in the hedge separating my garden from the neighbouring field. There was once a great, overgrown elm tree, so old and large that it was actually shown on the ordnance maps. A gloomy timber merchant, diagnosing elm disease, offered me five pounds for it as it stood; if he cut it down, it was sure to be rotten through and through (he told me), and then I would have to pay him to cart it away. I hurriedly collected five pounds on the spot. It was, of course, as sound as a bell, and is still supplying coffin boards for most of the deceased population for miles around. However, it did not cost me anything to bring the tree to maturity, and five pounds is five pounds—and not even taxable. You, too, may have a nest egg. Why not break into it now, and spare yourself the degradation of explaining to your partners that you simply can't last out? Such a thing, once said, is like some evil contagion. Your partners will probably say exactly the same thing and—ting!—the whole gang of you are applying to the cashier for a sub.

Lastly, you could try writing articles for some legal journal. But there ought to be some easier way.

"HIGHFIELD"

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the " Points in Practice " Department, " The Solicitors' Journal," 21 Red Lion Street, London, W.C.1, but the following points should be noted :

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Section 20—RENT LIMIT—IMPROVEMENT GRANT UNDER HOUSING ACT, 1949

Q. Our client is a tenant of an unfurnished cottage under an agreement dated in May, 1948, whereby the rent was fixed at £12 per annum, payable half-yearly, the landlord paying rates. The rent has been paid half-yearly at Ladyday and Michaelmas, in arrear, the last payment being made up to Michaelmas, 1957. The landlord, by application dated in April, 1957, obtained an improvement grant of £630 (under the Housing Act, 1949), in respect of improvements to our client's and the adjoining cottage.

Subject to the conditions imposed by s. 23 of the Housing Act, 1949, as amended by the Housing Repairs and Rents Act, 1954, the council approved the application in May, 1957, and one of the conditions was : " The rent payable by the occupiers of the dwellings shall not exceed £65 a year in respect of each of the said dwellings, subject to any alteration in respect of increases in rates or subsequent improvements as may be permitted by the Rent Restriction Acts."

The landlord's solicitors allege that the tenant signed a certificate endorsed on the landlord's application form for the grant, stating that he agreed to the works of improvement being done and would accept liability to pay the increased rent to be charged when the house had been improved. The improvements were actually completed in August, 1957. No notices have been served on the tenant. The landlord now seeks to recover rent at 25s. per week (viz., £65 per annum), as from Michaelmas, 1957, and to collect rent on a four-weekly basis in future. The maximum rent, if ascertained in accordance with s. 1 of the Rent Act, 1957, would be £31 or thereabouts.

We have considered the effect of s. 22 of the Housing Act, 1949, as amended by the Housing Repairs and Rent Act, 1954, but both these sections were repealed by the Rent Act, 1957, and would appear to be superseded by s. 5 (1) and (4) or by s. 20 (1) (*d*) of the 1957 Act. The 1957 Act came into force the month before the present improvement works were completed, and the question appears to be whether s. 20 (1) (*d*) or s. 5 (1) and (4) of the Act applies in this case. The landlord's solicitors maintain that s. 20 (1) (*d*) applies. The operative words in s. 20 (1) appear to be : " but if the conditions were imposed before the commencement of this Act and then limited the rent to an amount exceeding what would be the rent limit if ascertained under subs. (1) of s. 1 of this Act, the rent limit shall be *that amount*, subject, however, to the provisions of subs. (2) of that section."

In this particular case the council approved the application for the grant in May, 1957, subject to the conditions stated in s. 23 of the Housing Act, 1949, as amended by the Housing Repairs and Rents Act, 1954. The amount of the new rent is referred to in the conditions printed on the back of the form of approval and the landlord's solicitors contend that this amounts to an imposing of the condition. By s. 37 (3) of the Housing Repairs and Rents Act, 1954, the maximum rent is actually fixed on the date on which the local authority certified that the improvement works were completed to their satisfaction. The local authority gave the certification in this case on 21st August, 1957. As no notice was served under s. 37 of the Housing Repairs and Rents Act, 1954, and the improvements were not completed until after the commencement of the Rent Act, 1957, it is contended that the condition providing for a maximum rent of £65 was not imposed before the commencement of the Rent Act, 1957. In your view, does s. 20 (1) or do ss. 1 and 5 (1) and (4) of the Rent Act, 1957, apply in this case ?

A. In our opinion, the problems should be approached in this way.

(1) The Rent Act, 1957, Sched. VI, para. 14, replaces the Housing Act, 1949, s. 23 (i) and (ii) by : " the rent limit imposed by s. 20 of the Rent Act, 1957."

(2) Section 20 takes five types of rent-fixing or rent-limiting conditions, including the Housing Act, 1949, s. 23 type, and divides them into two classes : those found on 6th July, 1957 (" the commencement of the Act " : s. 27 (2)), to authorise a rent which does not (as it transpires) exceed the rent limit as calculated in accordance with s. 1, and those found to authorise a higher rent than the rent worked out in accordance with s. 1.

(3) The question is not primarily whether s. 20 (1) *or* ss. 1, 5 (1) and (4) govern the position, but whether, as a result of the substitution of " the rent limit imposed by s. 20," s. 5 (1) and (4) comes into the picture.

(4) When (and only when) the conditions imposed are found to give a rent exceeding what the limit under s. 1 would be, " the provisions of subs. 1 (2) " are expressly made operative (concluding words of s. 20 (1)) and these provide for *adjustment from time to time* under ss. 3 to 5 and to reduction as provided by Pt. II.

(5) In the case submitted, then, as the conditions imposed limited the rent to (what has turned out to be) an amount exceeding the rent limit if ascertained under s. 1, the higher figure is the rent limit. The clause itself provides for adjustment in accordance with the Acts and this, we consider, means that s. 5 (1) and s. 5 (4) (the grant having presumably been made under s. 20 of the Housing Act, 1949), are applicable : that is to say, the " amount expended on the improvement " is to be taken to be the amount actually expended, less the amount of the grant.

Schedule V—COMBINED PREMISES—APPORTIONMENT OF GROSS VALUE

Q. A dwelling-house and shop were, prior to the Rent Act, 1957, " let as a separate dwelling-house," both parties treating the tenancy as a controlled one. The new gross rateable value of the premises is £30, and a notice of increase of rent has been served on the tenant raising the rent, exclusive of rates, up to £60 per annum. The tenant's solicitors maintain that the notice is void because there has been no apportionment of the gross rateable value between the shop and living accommodation. As the definition of " dwelling " in the 1957 Act means in relation to a controlled tenancy " the aggregate of the premises comprised in the tenancy," there seems to us no statutory need for such an apportionment, as there seems to be no practical difference between the definition of " dwelling-house " in the 1920 Act and " dwelling " in the 1957 Act, and the property has not become decontrolled. Is the notice, in your opinion, good or bad, and is there any need for such an apportionment ?

A. We agree with the tenant's solicitors. As the premises consist of a shop and dwelling-house, the gross value was ascertained in accordance with s. 4 (3) of the Valuation for

Rating Act, 1953. That means, in effect, that the gross value of the dwelling-house part was based on 1939 rental values and the gross value of the shop part on current rental values. By para. 9 of Sched. V to the Rent Act, 1957, in such circumstances the gross value, for the purposes of that Act, is to be reduced by four-sevenths of the amount of the gross value which relates to that part of the premises not used as a dwelling-house, and the certificate of the valuation officer is conclusive evidence of that amount. Until, therefore, such an apportionment is made no valid notice of increase can be served.

"Premium"—Deposit—Rent in Advance

Q. Is there anything in the prohibiting of premiums, or elsewhere in the Rent Act, 1957, which prevents a landlord from requiring a deposit as security for the future payment of rent? Without such a deposit the procedure involved in getting possession if the tenant defaults in payment of rent invariably leads to the loss of about three months' rent, which it is almost impossible to recover once the tenant has vacated. The reference is primarily to tenancies outside the Rent Acts.

A. In our opinion, none of the authorities on the meaning of "premium" goes as far as to warrant the proposition that the requirement of such a deposit could be the requirement of payment of a premium within the meaning of the Landlord and Tenant (Rent Control) Act, 1949, s. 2, applied to de-controlled premises by the Rent Act, 1957, s. 13. Money deposited, if (which is arguable) "paid," is held on trust. The suggestion of depositing the amount with a third party is worth considering, but, in our view, the best means of securing the object would be to make rent, or at all events the last quarter's rent (that paid after notice to quit was given, if the tenancy be a periodic one) payable in advance and insisting on a forfeiture clause (forehand rent is not apportionable: *Ellis* v. *Rowbotham* [1900] 1 Q.B. 740). It is of significance that the Rent Act, 1957, which goes out of its way to tighten up the provisions by restricting the right to require payment of rent in advance, does not prohibit requirement of payment of a quarter's rent on the day the quarter commences: s. 15.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

The Future of Legal Aid

Sir,—In catching up with my reading of the Journal I am surprised to find that there appears to have been no comment on the Fabian Research Series, "Future of Legal Aid" (14th December issue).

The suggestion that there be radical revision of the financial sections will find little opposition, but some of the other ideas startle me, not because they are unorthodox, but because they would not bring about any desired reform. There is first the complaint that there is too much of peoples' time spent on certifying committees, and the alternative is to be a full-time chairman (plus the secretary and one member). Why adopt this most expensive procedure (of a full-time chairman) merely in order to retain the apparent democratic structure of the committee? A trained, experienced and qualified local secretary is just as able to give a decision on the legal merits and demerits of a case, and he should be empowered to do so, in all cases, and not only in those cases where the amount involved is less than £25. Incidentally it is farcical that at the moment the local secretary has no power to reject applications made by those with more than £420 per annum disposable income, which cases *must be rejected by the committee*.

A suggestion to transfer the N.A.B. staff to the legal aid staff fills me with nothing less than horror: in my experience the legal aid staff can with little or no increase in personnel carry out the assessment of applicants' incomes, just as (or even more!) quickly.

I would like to take a leaf out of the National Health Scheme and add another suggestion, that all applicants for legal aid pay a flat rate registration fee of £1, which could either be returnable or taken into consideration when fixing the contribution. This fee would be forfeited when applicants failed to co-operate with the legal aid officials. To-day far too much time is wasted by applications which can only be termed frivolous.

"Video"

Waiting with the Rest

Sir,—I have only this week-end had the opportunity of reading your issue for 18th January, or otherwise I should have written to you earlier. I am rather surprised in the first article under your heading "Current Topics" to see that your writer says, with regard to various extensions of legal aid, that "we must just wait with the rest." Whilst praising this attitude of patience, I take the view that it could be carried too far, and if one has to wait until there is a Government which states quite freely that there is money to spare, I feel that such a stage will never be reached. However, it is surprising how Governments can find the necessary finance when under pressure.

From the point of view of the financial well-being of the profession, I deprecate an attitude of resignation such as your writer adopts; even though our profession should make an example by keeping charges at as steady a level as possible, there is no reason whatsoever for the continuation of what is in essence part charitable work when undertaking criminal cases under the Poor Prisoners' Defence Act.

Whilst on the subject, I take the view that no other profession or trade would tolerate such conditions as obtain by virtue of the Legal Aid and Advice Act, 1949, under which we are still working on taxed costs, less 15 per cent., which was the rate in 1950. Can you point to another profession, business or class of worker that is still ruled by 1950 prices?

In conclusion, I am sorry to see that your writer adopts such an attitude and should have thought that a view more in support of the proper interests of the profession would have been more appropriate.

David Stephenson.

Brierley Hill.

Compensation for Road Injuries

Sir,—Before Messrs. Pollard and Oerton get at each other's throats, may I be permitted to express a view which, it is to be trusted, will not be considered reactionary or outmoded.

As my first premise I take what I believe to be the well established maxim that he who asserts a right superior to another shall prove his claim. Thus it is for Mr. Oerton to produce authority for his view that motorists "have a right of way superior to that of pedestrians on the roadway," and not for Mr. Pollard to prove the contrary. Surely the only right which the motorist enjoys, in common with all other users thereof, is to pass and re-pass along the highway on his lawful occasions? To say that the provision of zebra crossings proves that the motorist has otherwise a superior right of way is, with respect, a fallacy. It is equally, if not more, consistent with the view that but for such crossings all road users enjoy equal rights.

I would now, if I may, deal briefly with the suggestion Mr. Pollard has to make. It is no doubt prompted by a commendable sympathy for the victims of road accidents who are seriously disabled, or suffer death, so as to produce real hardship for the victim, and possibly his family, in circumstances where he cannot prove negligence on the part of the motorist and, indeed, may be himself entirely to blame. Where Mr. Pollard's kindly instincts mislead him, if I may respectfully say so, is in attempting to impose the responsibility for compensating these unhappy people on the motorist. There is already in this country, particularly in trade union circles with regard to industrial accidents, too much of the "I've had an accident; somebody's

got to pay " mentality which, besides being amoral, is conducive to a lack of care resulting in yet more mishaps.

It may be that there is a case for saying that all victims of road accidents who cannot recover against a motorist or other party thereto should have recourse as of right to the National Insurance Fund, although I express no view for the moment as to this. But if that were to be held the right view then in justice one would have to include accidents in the home, at school, at work and at play, in fact, every accident! Clearly national insurance could not stand the strain of compensation in like amounts to those sums awarded successful litigants and could only be used to make weekly payments during periods of partial or total incapacity. In any event, it would be illogical to hand out large sums of money to persons who, for aught we know, are the victims of nothing but their own folly. Would not it be better, in the long run, to encourage the individual to insure himself through the private insurance companies against such risks and leave those who do not, and are not otherwise compensated, to claim help from the National Assistance Board?

Finally, may I just say this: I deplore Mr. Oerton's views, both as a motorist and as a pedestrian, with all my heart. It is just this lack of consideration for others which causes accidents that could be avoided. A motor car is, in certain circumstances, a lethal weapon, and if I elect to drive it I must, not only to accord with the law but for moral reasons as well, drive with due consideration for all other road users, whatever my rights, imagined or real. If the Mr. Pollards and the Mr. Oertons of this world would both modify their views, the " Pollardites " as to who is going to pay for what may well be their own folly and the " Oertonians " as to their superior rights, and resolve to treat each other, when they meet on the roads, with that courtesy and consideration which they would accord to guests in their own drawing-rooms, then the need for this correspondence would be at an end.

S. P. Best.

Sturminster Newton,
Dorset.

Notice of Increase before Apportionment of Gross Value

Sir,—Might I be allowed to comment briefly on your very fair criticisms of my letter [*ante*, p. 64]?

(*b*) (i) I agree that the Rent Act, 1957, definitely entitles the landlord to a rent " . . . . which shall not exceed . . . the 1956 gross value of the building multiplied by two." The very definition of 1956 gross value is, however, modified " where the dwelling forms part only of a hereditament " to " such proportion . . . as may be agreed . . . or determined . . ." (Section 25 (1)). Surely, therefore, without such agreement or determination there is, by definition, no 1956 gross value for the part of the hereditament in question.

(*b*) (iii) As to *Austin* v. *Greengrass*, I may not have made my point quite clear. I was, of course, referring to the form of notice to be inserted in the rent book under the (then) Rent Restrictions Regulations, 1940.

The case certainly decided that (under the pre-1957 Act system) " the premises had a standard rent [from 1939] although the amount of the rent could only be determined by an application to the county court " (*ibid.*, p. 401, " determined " here being used in the sense " ascertain "). Whether the same reasoning now applies is, of course, the issue between us.

With respect, however, you quoted the case to show that one could have a " provisional " standard rent. The whole point of the first part of the decision was that the rent was definite, but not ascertained, a very different thing. The second part of the judgment (*ibid.*, p. 402) at first sight does appear to suggest the possibility that there could be a provisional standard rent. But, in fact, the court was there discussing the form of the notice and this fact, together with the first part of the judgment shows, I feel, that the court only intended to suggest that *the notice* (or statement) could be provisional. Certainly any overpayments could be reclaimed by the tenant, whereas, if the " provisional " rent were legally recoverable, this would not be so.

David C. E. Price.

London, N.1.

BOOKS RECEIVED

The Electronic Office. Second Edition. By R. H. Williams, A.I.B. pp. 80. 1958. London: Gee and Company (Publishers), Ltd. 17s. 6d. net.

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Brighouse's Short Forms of Wills. Seventh Edition. By Edward F. George, LL.B., Solicitor of the Supreme Court, and James H. George, LL.B., Solicitor of the Supreme Court. pp. xv and (with Index) 138. 1958. London: Sweet & Maxwell, Ltd. £1 1s. net.

The Advocate's Devil. By C. P. Harvey, Q.C. pp. xi and 166. 1958. London: Stevens & Sons, Ltd. 12s. 6d. net.

Casebook of the Curious and True. By Francis X. Busch. pp. 228. 1958. London: Arco Publications, Ltd. £1 10s. net.

Not Guilty. By Judge Jerome Frank and Barbara Frank. pp. 261. 1957. London: Victor Gollancz, Ltd. 18s. net.

Rayden's Practice and Law in the Divorce Division. Seventh Edition. Consulting Editor: C. T. A. Wilkinson, C.B.E. Editors: Joseph Jackson, M.A., LL.B. (Cantab.), LL.M. (Lond.), of the Middle Temple and the South-Eastern Circuit, Barrister-at-Law; D. H. Colgate, LL.B. (Lond.). pp. clxxii and (with Index) 1,463. 1958. London: Butterworth & Co. (Publishers), Ltd. £5 17s. 6d. net.

Hanson's Death Duties. Tenth Edition. Second Cumulative Supplement. By Henry E. Smith, LL.B. (Lond.). pp. viii and 94. 1958. London: Sweet & Maxwell, Ltd. 10s. 6d.

Family Law. By E. L. Johnson, M.A., LL.B. (Cantab.), Solicitor of the Supreme Court. pp. xl and (with Index) 325. 1958. London: Sweet & Maxwell, Ltd. £1 15s. net.

The Proof of Guilt. Second Edition. (The Hamlyn Lectures: Seventh Series.) By Glanville Williams, LL.D., F.B.A., of the Middle Temple, Barrister-at-Law. pp. ix and 326. 1958. London: Stevens & Sons, Ltd. £1 net.

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Overseas Trade Corporations. (The " British Tax Review " Guides, No. 1.) By David R. Stanford, M.A., LL.B., of the Middle Temple, Barrister-at-Law. pp. xx and (with Index) 339. 1958. London: Sweet & Maxwell, Ltd. £1 15s. net.

Careers Encyclopedia. Second Edition. Edited by G. H. Chaffe and P. J. Edmonds. pp. xvi and (with Index) 672. 1958. London: Cleaver-Hume Press, Ltd. 15s. net.

The Official Guide to Hotels and Restaurants throughout the British Isles and N. Ireland. Thirtieth Edition. pp. xvi and 484. 1958. London: British Hotels and Restaurants Association. 3s. 6d. net.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

NIGERIA: JURISDICTION: LAND DISPUTE

Chief Eke Oja *v.* Chief Kanu Ukpai

Lord Morton of Henryton, Lord Reid, Rt. Hon. L. M. D. de Silva

20th January, 1958

Appeal from the West African Court of Appeal.

The respondents, as plaintiffs representing the people of Biakpan, claimed a declaration of title to a piece of land known as "Ekuot Ijoho" at Biakpan, in the Calabar Province of Nigeria, and defined by a plan, and the appellants, as defendants representing the neighbouring people of Asaga, contested the claim. In the Supreme Court of Nigeria the trial judge gave judgment for the plaintiffs for the declaration claimed, and his judgment was, on appeal, affirmed by the West African Court of Appeal on 28th May, 1954. Before the Judicial Committee on the present appeal, the appellants (defendants in the suit) relied on submissions, not advanced in the West African courts, to the effect, *inter alia*, that the plaintiffs' action was, in substance, a claim to have the boundary between two tribes fixed by the Supreme Court and that that court had never had any jurisdiction to fix such a boundary; and, secondly, that if the Supreme Court ever had jurisdiction to decide such a claim as was now put forward by the plaintiffs, that jurisdiction was ousted by the Inter-Tribal Boundaries Settlement Ordinance (No. 49 of 1933) and had not existed since 30th November, 1933, when that Ordinance came into force.

LORD MORTON OF HENRYTON, giving the judgment, said that the plaintiffs' claim was simply a claim to ownership of the land and not a claim to have a boundary fixed between two tribes, and the decision of the claim was clearly within the jurisdiction of the Supreme Court of Nigeria, on transfer from the Native Court, by the joint effect of the Native Courts Ordinance and the Supreme Court Ordinance. The jurisdiction of the Supreme Court to decide upon such a claim did not appear to have been questioned in any case in the Supreme Court of Nigeria or in the West African Court of Appeal. Further, the Inter-Tribal Boundaries Settlement Ordinance did not deprive the Supreme Court of jurisdiction to decide the claim. That Ordinance contained no express exclusion of the Supreme Court's jurisdiction, did not, in s. 3, give any tribe a right to have a dispute decided, and by ss. 4 and 5 made it clear that the decision under the Ordinance need not be based on any principle of law. A jurisdiction of the kind conferred by the Ordinance could not have been intended to take away the *right* of any tribe to have its claim to ownership of a defined piece of land decided by the Supreme Court on legal principles after hearing argument. Appeal dismissed. The appellants must pay the respondents' costs of the appeal.

APPEARANCES: *Sir Andrew Clark*, Q.C., and *D. M. Ogwo* (*Robert K. George*); *L. G. Scarman*, Q.C., and *A. S. Trapnell* (*Sydney Redfern & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[1 W.L.R. 151**

Chancery Division

CONFLICT OF LAWS: CONTRACT: DISCHARGE: LAW APPLICABLE TO DETERMINE IF CONDITION DISCHARGED

***In re* United Railways of the Havana and Regla Warehouses, Ltd.**

Wynn Parry, J. 19th November, 1957

Adjourned summons.

By this summons, the Pennsylvania Co. of Banking and Trusts, claiming to be a creditor of the United Railways of the Havana and Regla Warehouses, Ltd. (in voluntary liquidation) (hereafter called the company), applied for an order that the liquidators' rejection of the applicant's proof be reversed and that the proof be admitted in full. The company was incorporated in England in 1898, and conducted a railway undertaking in Cuba. In 1921 it bought rolling stock worth $14,000,000 and decided to raise part of that sum in the U.S.A. under a scheme whereby 15-year 7½ per cent. trust certificates should be issued to the public through a trust company, which was a corporation of the Commonwealth of Pennsylvania. In February, 1921, the company caused to be incorporated in the U.S.A. a subsidiary company to which on 25th March, 1921, it sold the rolling stock. By a lease dated 18th April, 1921, and executed in New York, the subsidiary company as lessor leased to the company as lessee the rolling stock for a period of fifteen years for a rental payable twice yearly at the office of the trust company in Philadelphia. The rentals payable under the lease were to provide principal and interest reserved by the trust certificates, the lease forming security for those payments. By an agreement executed in New York contemporaneously with the lease, the subsidiary company assigned all its rights under the lease and interest in the rolling stock to the trust company as trustee for the certificate holders. By a further agreement dated 27th April, 1922, the subsidiary company resold the rolling stock to the company "subject to and with the benefit of the lease and the agreement." From 14th February, 1931, the company ceased to pay the instalments due under the lease. Between 1934 and 1949 the Cuban State passed moratorium laws which extended to railway companies, and in 1949 the Cuban Government, acting under those laws, acquired the management and control of the company's undertaking and assets by way of sale and purchase. By an agreement dated 5th September, 1953, the Cuban Government released the company from all responsibility in respect of liabilities arising under the trust certificates. On 4th March, 1954, the company went into voluntary liquidation and the successors of the trust company as trustee for the certificate holders lodged a proof, claiming the instalments that were payable under the lease. *Cur. adv. vult.*

WYNN PARRY, J., said that the first question was whether the obligation of the company under the lease was still subsisting or whether it had been discharged. The answer depended in the first instance on ascertaining which was the correct law to apply. Two systems of law had been canvassed, the law of Pennsylvania and that of Cuba. If it was correct to apply the law of Pennsylvania, it was because the correct law to apply was the proper law of the contract, and the proper law of the contract was the law of Pennsylvania. If it was correct to apply the law of Cuba, it was either because the correct law to apply was the proper law of the contract and the proper law of the contract was Cuban law, or because the effect of a debt emerging from the contract and achieving a separate existence was that the correct law to apply was the *lex situs* and the debt was situate in Cuba. Every contract had a proper law; it was the law which the parties either expressly or impliedly had chosen to govern their contractual relations. According to the proposition advanced, the maturing of the obligation of the debtor under the contract into a debt of itself took that debt out of the contract, and therefore extinguished the pre-existing obligation, and forced the creditor to have recourse to the law of the debtor's residence in order to enforce the debt. He could not regard this as sound in principle. It was not supported by the authorities; and was contrary to the reasoning of Lord Esher, M.R., in *Gibbs & Sons* v. *Société Industrielle et Commerciale des Métaux* (1890), 25 Q.B.D. 399. He therefore held that it was the proper law of this contract which had to be applied in the present case to determine whether the lease had been discharged or not. The next question was what was the proper law of the lease. The lease was expressly recited in the agreement, and in the lease there was a recital of the intention immediately to assign the benefit of the lease to the trustee. The two documents were essential parts of the same transaction. In those circumstances one would expect that they each would have the same proper law, and he held that they had. The proper law of both the lease and the agreement was, therefore, the law of the Commonwealth of Pennsylvania. It followed, therefore, that the lease had not been discharged and that the trustee was entitled to prove in the liquidation of the company for whatever was the proper sum in sterling. That was sufficient to dispose of the matter, but in case it went to the Court of Appeal his lordship expressed his views on Cuban law and said, accepting the view of an expert on Cuban law that under Cuban law

the law of Pennsylvania would be held to be the proper law of the contract; then, on the assumption that Cuban law applied here, the conclusion as to the right of the trustee to prove in the liquidation of the company would be the same.

APPEARANCES: *R. O. Wilberforce*, Q.C., and *T. D. D. Divine* (*Herbert Smith & Co.*); *John Megaw*, Q.C., *Richard Hunt* and *K. W. Mackinnon* (*Norton, Rose & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[2 W.L.R. 229**

ESTOPPEL: RECITAL IN CONVEYANCE THAT VENDORS SEISED IN UNENCUMBERED FEE SIMPLE IN POSSESSION: CONVEYANCE SUBJECT TO LEASE

District Bank, Ltd. *v.* Webb and Others

Danckwerts, J. 4th December, 1957

Adjourned summons.

Edward and Mrs. *W*, the owners in fee simple of a house, demised the house by a lease dated 25th March, 1952, to Edward and his partner for a period of twenty-one years. In July, 1954, Edward and Mrs. *W* charged the property in favour of the plaintiff bank to secure Mrs. *W*'s bank account by memorandum of deposit and in October, 1954, her brother Edwin executed a further memorandum of deposit for the same purpose. On 8th November, 1954, Edward and Mrs. *W* conveyed the house to Edwin, and the conveyance recited that the vendors were "seised in unencumbered fee simple in possession upon trust for sale" of the property in question. On 7th July, 1955, by legal charge, Edwin charged the property in favour of the bank in order to secure his account. Edward and Mrs. *W* were still at that date, and at all material times, either together or one of them, in possession of the house. The bank, upon failure by Edwin to pay moneys outstanding, claimed possession of the property under the legal charge executed by Edwin. On Edward and Mrs. *W* resisting the claim for possession in reliance on the lease dated 25th March, 1952, the bank contended that they were estopped from so relying by reason of the recital in the conveyance by them to the brother dated 8th November, 1954.

DANCKWERTS, J., said that, in the first place, he was not satisfied that a lease was an incumbrance to the parties. It was true that in certain circumstances a lease might be regarded as an incumbrance, but an incumbrance, normally, was something in the nature of a mortgage and not something in the nature of a lease or tenancy, and since, on the authorities, an unambiguous representation must be shown if an estoppel was to be created, in that respect the recital was not sufficient for the plaintiff bank's purpose. Secondly, the words "in possession" were relied upon, but "in possession" did not mean vacant possession. The meaning was "fee simple in possession" as opposed to "fee simple in reversion" and again it was impossible for the bank to rely upon such representation in the recital to cause the vendors to be bound by any estoppel. Therefore the bank was not entitled to an order for possession by reason of the existence of the lease. Declaration accordingly.

APPEARANCES: *G. T. Hesketh* (*Claude Barker & Partners*); *M. Nesbitt* (*Gregsons*).

[Rported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 148**

Queen's Bench Division

LANDLORD AND TENANT: DENIAL OF LEASE IN DEFENCE BY ONE OF TWO EXECUTORS OF LESSEE: WHETHER FORFEITURE

Warner *v.* Sampson

Ashworth, J. 5th December, 1957, and 13th January, 1958

Action.

On 27th April, 1955, a landlord issued a writ against two defendants, suing them as the legal personal representatives of the lessee and claiming possession of the demised property on the grounds of non-payment of rent and breaches of covenant contained in the lease. The statement of claim, *inter alia*, referred to the lease, set out the title of the landlord and specified the breaches of covenant alleged. On 27th May, 1955, judgment in default of appearance was entered against the first defendant. On 14th June the solicitors for the second defendant instructed counsel to draft a defence if only to stay the landlord's hand while efforts were made to remedy the breaches of covenants, and on 15th June a defence, signed by counsel, was delivered on behalf of the second defendant, in which she admitted that she was appointed executrix of the will of the lessee, and denied the alleged breaches of covenant; by para. 3: "Save and except for the admission herein contained this defendant denies each and every allegation in the statement of claim as if the same were specifically set out and traversed seriatim." On 29th June the landlord delivered a reply alleging that by that defence the second defendant had disclaimed and disputed the landlord's title as landlord and that she (the landlord) was entitled, and thereby exercised her right, to forfeit the term. On 26th August the judgment against the first defendant was set aside and the second defendant was given leave to amend, but not to withdraw, her defence. Thereafter a defence by the first defendant and the amended defence of the second defendant, both of which admitted the lease and the title of the landlord and contained a counter-claim for relief from forfeiture, were delivered, but the landlord contended that there was no jurisdiction to grant relief from the forfeiture resulting from the pleadings. [Counsel appearing for the defendants was not the counsel who drafted the defence of the second defendant.]

ASHWORTH, J., reading his judgment, said that it had been contended that denial by a tenant of his landlord's title must be clear and unambiguous if it was to be the basis of a claim for forfeiture, and that the pleading did not satisfy that condition. In his lordship's judgment, the wording of para. 3 was too clear and too specific. Next, it had been contended that the denial of the lease contained in the pleading was made by mistake, or alternatively, was not intended, and in the circumstances was not binding on the second defendant. His lordship would prefer to call it a lapse rather than a mistake and he could not accept the submission that counsel's mind did not go with his signature; the lapse was an instance of forgetfulness and not of mistake. Nor was his lordship able to hold that counsel who drafted the defence was disregarding any specific instructions or that there was any misunderstanding. Had the second defendant been in the position of a sole lessee in June, 1955, when her defence was delivered, there would have been no answer to the plaintiff's claim as soon as the reply was delivered; the proposition for the plaintiff was that when one of two executors by his defence disputed the title of the landlord, the other executor was bound by the consequences unless he himself put in a defence admitting the title. For the defendants it had been argued that for a denial of title to give rise to forfeiture the denial must be made by a lessee, and that, executors of a lessee being joint tenants, a denial could only effectively be given by them both. But no case was cited which questioned or overruled the decision in *Simpson* v. *Gutteridge* (1816), 1 Madd. 609 (where it was said at p. 616 ". . . several executors are considered only as one, and a gift, sale, surrender, payment, release or judgment confessed, by one executor, is as effective as if all of them had joined . . ."), and subject to the effect of the Administration of Estates Act, 1925, his lordship was of the opinion that the proposition put forward for the plaintiff was correct. The effect of ss. 2 (2) and 55 of that Act was that where there were two or more personal representatives a conveyance of real estate including a "disclaimer" should not be made without the concurrence of all such personal representatives, but in his lordship's judgment the type of "disclaimer" contemplated in s. 55 was a document recognisable and identifiable as a disclaimer. It would be an abuse of language to describe a defence delivered in an action as a disclaimer merely because it contained a denial of the landlord's title; that so-called disclaimer was in essence a repudiation of the tenancy: the defence was not a "conveyance" or disclaimer within those sections, and the claim for possession succeeded. His lordship added that the fact that the judgment entered against the first defendant might have been of no effect (see *Gill* v. *Lewis* [1956] 2 Q.B. 1) was immaterial, for although the judgment was set aside in August, it was then too late, and the plaintiff's rights had accrued.

On a subsequent claim by the defendants that they were entitled to apply for relief from forfeiture under s. 146 of the Law of Property Act, 1925, his lordship said that s. 146 dealt with the procedure for forfeiture arising in cases where a landlord was seeking a right of re-entry or forfeiture under a proviso or stipulation in a lease for a breach of any covenant or condition in the lease, and the section provided that that right should not be enforceable unless certain preliminary conditions were satisfied. It would have been impossible for the landlord to comply with those conditions—nor did the section contemplate the application

of those conditions to the situation in the present case. The forfeiture was not under any proviso or stipulation in a lease but arose by operation of law, and relief could not be granted. Judgment for the plaintiff.

APPEARANCES: *L. G. Scarman*, Q.C. (*Murray, Hutchins & Co.*); *J. H. Hames* (*Wilders & Sorrell*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[2 W.L.R. 212**

PAYMENT INTO COURT: STATUTORY AND COMMON-LAW CLAIMS: WHETHER CAUSES OF ACTION MUST BE SPECIFIED

Graham *v.* C. E. Heinke & Co., Ltd.

Donovan, J. 17th January, 1958

Action.

The plaintiff claimed damages for personal injuries incurred due to the defendants' negligence at common law and breach of statutory duty. Before the defence was delivered the defendants made a general payment of £1,000 into court without specifying the cause of action in respect of which the payment was made. The plaintiff did not take the money out, the action proceeded to trial and the judge awarded the plaintiff £760 damages. The defendants then applied for the costs of the action after the date of payment in; the plaintiff resisted the application on the ground that the payment in had to be regarded as a nullity as it did not comply with Ord. 22, r. 1 (2), since it did not specify the cause of action in respect of which payment was made.

DONOVAN, J., said that one view of the matter was that there were not two causes of action, but only one, namely, damages suffered through the defendants' negligence. His lordship did not need to go into the matter because Lord Wright said in *London Passenger Transport Board* v. *Upson* [1949] A.C. 155, at p. 169, that they were two causes of action. On that footing, therefore, the problem remained whether there were two such causes of action as R.S.C., Ord. 22, r. 1 (2), contemplated. His lordship thought that the rule contemplated cases where there were several causes of action giving rise to several independent claims for damages; not a case where, although there might be two causes of action, they were really alternative in that only one award of damages was possible so that satisfaction of one cause of action ended the whole claim. Such was the present case and no purpose at all would be served by making the defendant in such a case specify that his payment in was in respect of a breach of statutory duty or common-law negligence. Accordingly, his lordship rejected the plaintiff's argument on that point. His lordship was also asked not to order that any balance of costs found to be due to the defendants should come out of the damages now awarded to the plaintiff, since he was legally assisted. Where a litigant was assisted by public funds, a particular duty lay on him not to refuse a reasonable offer, and certainly not to trade on his privileged position in the matter of costs to decline to accept a payment which he might well accept if not so privileged. If his lordship were to treat the award of damages as inviolate, as he was asked to do, he would be setting an unfortunate precedent because there were no special facts to justify such special treatment. Order accordingly.

APPEARANCES: *Leonard Halpern* (*King-Hamilton & Green*); *John D. Stocker* (*Kingsbury & Turner*).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] **[2 W.L.R. 224**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Cayman Islands and Turks and Caicos Islands Bill [H.C.] [30th January.
Overseas Service Bill [H.C.] [30th January.
Post Office and Telegraph (Money) Bill [H.C.] [29th January.

Read Second Time:—

All Hallows the Great Churchyard Bill [H.L.] [28th January.
All Hallows the Less Churchyard Bill [H.L.] [28th January.
Angle Ore and Transport Company Bill [H.L.] [28th January.
Ashton-under-Lyne, Stalybridge and Dukinfield (District) Waterworks Bill [H.L.] [29th January.
Blackpool Corporation Bill [H.L.] [29th January.
Brazilian Traction Subsidiaries Bill [H.L.] [30th January.
Cammell Laird and Company Bill [H.L.] [30th January.
City of London (Various Powers) Bill [H.L.] [30th January.
Coventry Corporation Bill [H.L.] [29th January.

Read Third Time:—

Life Peerages Bill [H.L.] [30th January.
Recreational Charities Bill [H.L.] [30th January.
Trustee Savings Banks Bill [H.C.] [30th January.

In Committee:—

Public Records Bill [H.L.] [30th January.
Solicitors (Scotland) Bill [H.L.] [30th January.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Forth Road Bridge Order Confirmation Bill [H.C.] [27th January.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to the Forth Road Bridge.

Parliament Bill [H.C.] [28th January.

To alter the composition of the House of Lords by removing its hereditary basis; to reduce its powers and to increase the powers of the House of Commons; and for purposes connected therewith.

Thermal Insulation (Dwellings) Bill [H.C.] [29th January.

To make provision for the thermal insulation of dwellings; and for purposes connected therewith.

Wages Bill [H.C.] [28th January.

To amend the law relating to the payment of wages.

Read Second Time:—

British Nationality Bill [H.L.] [28th January.
Entertainments Duty Bill [H.L.] [28th January.
Litter Bill [H.C.] [31st January.
Overseas Resources Development Bill [H.C.] [28th January.

B. QUESTIONS

AGRICULTURAL HOLDINGS ACT (ARBITRATORS)

Mr. JOHN HARE said that the panel of arbitrators under the Act was appointed by the Lord Chief Justice solely for the purposes of the Minister's own functions under the Act and publication of the names of the members of the panel would serve no practical purpose. He understood that the professional bodies concerned had always shared this view. [27th January.

CUSTOMS AND EXCISE DUTY (ASSESSMENT OF LIABILITY)

Mr. HEATHCOAT AMORY said there was already a recourse to a technical valuation by independent persons of articles assessed to duty on their import. Decisions by individual Customs officers could be contested and made the subject of appeal to the Commissioners of Customs and Excise, from whose decision there was recourse to the courts. [28th January.

INCOME TAX ASSESSMENTS (APPEALS)

Mr. HEATHCOAT AMORY said that the administrative cost of sending a copy of a notice of assessment to the taxpayer's adviser would not be justified. A person giving notice of appeal was not obliged to suggest an amount to be paid on account. [28th January.

COMMON MARKETS TREATY (EFFECT ON CONTRACTS)

Sir DAVID ECCLES said that he was aware of the uncertainty in commercial and legal circles about the possible effect of the Rome (Common Markets) Treaty in rendering null and void numerous commercial contracts between British nationals and nationals of the countries concerned, and he was making inquiries. [28th January.

PREVENTIVE DETENTION (RELEASE)

Mr. R. A. BUTLER said that all prisoners serving sentences of preventive detention were eligible for release before they had served the whole of their sentence, those who were admitted to third stage after serving two-thirds of the sentence, and those who remained in second stage after serving five-sixths. [30th January.

PRISON SENTENCES

Mr. R. A. BUTLER gave the following details of the percentage increase as compared with 1938 of the average sentences imposed by the higher courts:—

Breaking and entering offences ..	55 per cent.
Sexual offences	77 per cent.
Violence against the person	30 per cent.

[30th January.

INDICTABLE OFFENCES

Mr. R. A. BUTLER gave the following details of the numbers of indictable offences known to the police in the three groups referred to:—

	1938	1956
Breaking and entering	49,184	85,768
Sexual offences	5,018	17,103
Violence against the person ..	2,721	9,307

[30th January.

MOTORING OFFENCES

Asked whether, as the average fine in 1956 for a motoring conviction had been £2 7s. 4d., and for offences against pedestrian crossings £1 5s. 10d., he had specifically called the attention of magistrates to the maximum fines imposable, Mr. R. A. BUTLER said that his predecessor had done this in a circular in September, 1956, and he did not think further action was at present called for. [30th January.

MAINTENANCE PAYMENTS

Mr. R. A. BUTLER said that the suggestion that the courts should be enabled to make contribution orders with retrospective effect in respect of children received into or committed to the care of local authorities or committed to approved schools had been noted for consideration when a suitable opportunity arose for amending legislation. [30th January.

LAW REFORM

The ATTORNEY-GENERAL, asked whether he would consider setting up machinery for law reform as suggested in the document entitled "Speed-up Law Reform," said that the Lord Chancellor did not consider that there was any need for the appointment of another Minister for that purpose, nor did he see any advantage in setting up a standing council on law reform in addition to the existing Law Reform Committee. The possibility of appointing a criminal law revision committee was already engaging the attention of the Home Secretary. [30th January.

JUSTICES (COURSES OF INSTRUCTION)

The ATTORNEY-GENERAL said that he could not say to what extent the courses of instruction provided for newly appointed justices of the peace included explanations of the role, practice and etiquette of the Bar, and in particular of the relationship between counsel, his instructing solicitor, and the accused. He would draw the Lord Chancellor's attention to the suggestion that these matters should be included. [31st January.

STATUTORY INSTRUMENTS

Brighton Corporation (Pyecombe) Water Order, 1958. (S.I. 1958 No. 93.) 5d.

Gwynedd River Board (Alteration of Boundaries of the Dysynny Valley Drainage District and the Towyn Drainage District) Order, 1957. (S.I. 1957 No. 2252.) 5d.

Housing (Register of Rents) (Scotland) Regulations, 1958. (S.I. 1958 No. 80 (S. 4).) 5d.

Import Duties (Drawback) (No. 2) Order, 1958. (S.I. 1958 No. 91.) 5d.

Import Duties (Exemptions) (No. 1) Order, 1958. (S.I. 1958 No. 118.) 5d.

Load Line Exemption (Guernsey) Order, 1958. (S.I. 1958 No. 100.) 5d.

London Traffic (Weight Restriction) (Basildon and Thurrock) Regulations, 1958. (S.I. 1958 No. 124.) 5d.

Silk Duties (Drawback) (No. 1) Order, 1958. (S.I. 1958 No. 121.) 6d.

Stopping up of Highways (City and County Borough of Bradford) (No. 1) Order, 1958. (S.I. 1958 No. 75.) 5d.

Stopping up of Highways (County of Buckingham) (No. 2) Order, 1958. (S.I. 1958 No. 95.) 5d.

Stopping up of Highways (County of Hertford) (No. 2) Order, 1958. (S.I. 1958 No. 96.) 5d.

Stopping up of Highways (County of Kent) (No. 2) Order, 1958. (S.I. 1958 No. 77.) 5d.

Stopping up of Highways (County of Kent) (No. 3) Order, 1958. (S.I. 1958 No. 83.) 5d.

Stopping up of Highways (County of Leicester) (No. 1) Order, 1958. (S.I. 1958 No. 98.) 5d.

Stopping up of Highways (County of Nottingham) (No. 2) Order, 1958. (S.I. 1958 No. 81.) 5d.

Stopping up of Highways (County of Stafford) (No. 2) Order, 1958. (S.I. 1958 No. 97.) 5d.

Stopping up of Highways (County Borough of Sunderland) (No. 1) Order, 1958. (S.I. 1958 No. 99.) 5d.

Stopping up of Highways (County of Warwick) (No. 1) Order, 1958. (S.I. 1958 No. 82.) 5d.

Stopping up of Highways (County of Worcester) (No. 1) Order, 1958. (S.I. 1958 No. 113.) 5d.

Stopping up of Highways (County of York, West Riding) (No. 1) Order, 1958. (S.I. 1958 No. 78.) 5d.

Stopping up of Highways (County of York, West Riding) (No. 2) Order, 1958. (S.I. 1958 No. 79.) 5d.

Tees Valley Water (Broken Scar) (Variation) Order, 1958. (S.I. 1958 No. 94.) 4d.

Wheat Commission (Dissolution) Order, 1958. (S.I. 1958 No. 125.) 4d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. Prices stated are inclusive of postage.]

PRACTICE NOTE

PROOF OF FOREIGN MARRIAGE IN DIVORCE DIVISION

Where it is necessary to adduce expert evidence to establish the validity of a foreign marriage which is the subject of proceedings in the Divorce Division, the validity of the marriage not being in issue, such evidence, unless otherwise directed, may be given by affidavit, without prior leave.

This Practice Note does not apply to marriages celebrated in France or Belgium, which are covered by the Practice Note of the 16th May, 1955.

B. LONG,
Senior Registrar.

28th January, 1958.

"THE SOLICITORS' JOURNAL," 6th FEBRUARY, 1858

THE SOLICITORS' JOURNAL of the 6th February, 1858, reported the examination of Henry and Cheslyn Hall, solicitors, of New Boswell Court, before the Court of Bankruptcy: "It is, of course, inevitable that so glaring an abuse of professional position should tend to bring discredit upon the whole body of solicitors and we are therefore thankful to the *Times* for acknowledging . . . that solicitors are everywhere entrusted with the substance, the honour and the happiness of individuals and families, that they hold in their hands vast power and in their breasts the most sacred confidences; and that abuse of these enormous opportunities is rare, while the conscientious use of them is the ordinary unremarked routine of the solicitor's life . . . We . . . concur in the strictures of the *Times* upon the gross misconduct of the Halls, and we rejoice that that journal has not been tempted . . . to launch forth into . . . general denunciations of law and lawyers . . . Various lessons for the guidance of a professional career may be drawn . . . from the examination of the Halls. It appears that they succeeded, some twenty years ago, to a business previously conducted by their father and to many old connexions with clients of high position and great wealth . . . A man of talent and energy may create for himself a great professional position or he may by his proved capacity win admission as partner into some house of old foundation; but he cannot hope, in his single life, to do the work of several generations by rearing such an edifice himself. The finish of time can be given by no other workman; nor can any artificial process impart to the recent success . . . the settled look and mellow colouring of age. And yet . . . a single life may far more than suffice to destroy what the longest and most active and laborious professional career would scarcely prove adequate to create. In twenty years a valuable practice has been annihilated . . . and uncovered liabilities of £120,000 incurred."

NOTES AND NEWS

Honours and Appointments

Mr. E. G. SHARP, solicitor to Leicestershire County Council, has been appointed clerk to Skipton Rural Council with effect from 1st April.

Mr. JOHN BRIDGE TYRER has been appointed Registrar of Cambridge, Bishop's Stortford, Ely, Newmarket and Saffron Walden County Courts and District Registrar in the District Registry of the High Court of Justice in Cambridge in succession to Mr. K. W. WELFARE, who has been appointed Registrar of the Ipswich group of county courts.

Personal Note

Mr. David Charles Law, solicitor, of Cornhill, London, E.C.3, was married recently at Sheffield to Miss Mary Senior, of Sheffield.

Miscellaneous

DEVELOPMENT PLAN

DEVELOPMENT PLAN FOR THE COUNTY BOROUGH OF SOUTH SHIELDS

Proposals for alterations or additions to the above-mentioned development plan were on 23rd January, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the County Borough of South Shields. A certified copy of the proposals as submitted has been deposited for public inspection at the Town Clerk's Office, Town Hall, South Shields. The copy of the proposals so deposited together with a copy of the plan are available for inspection free of charge by all persons interested, at the place mentioned above between the hours of 9 a.m. and 5.15 p.m. on weekdays and 9 a.m. and 12 noon on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 12th March, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the South Shields County Borough Council and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

H.M. LAND REGISTRY NOTICE

The Chief Land Registrar desires to remind solicitors that he is prepared to act on photographic copies or examined abstracts of documents of record such as probates, letters of administration and birth, marriage and death certificates so as to avoid the need for lodging the original documents in the registry.

H.M. LAND REGISTRY,
January, 1958.

Wills and Bequests

Mr. A. B. Leather, solicitor, of Wirral, Cheshire, left £93,055 net.

CASES REPORTED IN VOL. 102

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